

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DEN:POSTF-138312-02
PJSewell

date: August 20, 2002

to: [REDACTED], LMSB [REDACTED]
Team Manager

from: Area Counsel
(Natural Resources:Houston)

subject: Request for LMSB Division Counsel Assistance - Forms 872

[REDACTED] (FKA [REDACTED])
EIN: [REDACTED]
Last Known Address: [REDACTED]
[REDACTED]

We have written this memorandum in response to your request for assistance dated July 11, 2002 regarding the validity of Forms 872 that have already been secured from the taxpayer. Simultaneously with the issuance of this advice to you, we will be sending it to the National Office for a ten day review under the Non-Docketed Significant Advice program. Please wait until this review is completed before acting on this advice. This memorandum should not be cited as precedent.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUE

Whether a Form 872 for liability under I.R.C. §§ 1441-1464 with the language "[REDACTED], Formerly Known As [REDACTED]" inserted in the "Name(s)" blank properly identifies the party?

CONCLUSION

Yes, the signed Forms 872 relating to the Forms 1042 of [REDACTED] for the years [REDACTED] through [REDACTED] properly identify

the party in this case. However, if additional Forms 872 are required for [REDACTED] for the years [REDACTED] through [REDACTED], the language inserted in the "Name(s)" blank should read:

[REDACTED] (EIN: [REDACTED]), Formerly Known as [REDACTED]

FACTS

I have relied on the facts set out in this memorandum for my opinion in this case. If you believe that I should consider additional facts, you should notify me as this could change my opinion.

[REDACTED] ([REDACTED]) filed Forms 1042 for the years [REDACTED] through [REDACTED]. Prior to [REDACTED], [REDACTED] was the common parent of the consolidated group. In [REDACTED], [REDACTED] became a subsidiary of [REDACTED]. On [REDACTED], [REDACTED] merged into [REDACTED] in a downstream merger. At that time, [REDACTED] ceased to exist and [REDACTED] changed its name to [REDACTED].

On [REDACTED], [REDACTED] executed Forms 872 which extended the statute of limitations for withholding tax adjustments to the taxpayer's Form 1042 withholding tax returns for the [REDACTED] through [REDACTED] taxable years. On the Form 872, the revenue agent inserted "[REDACTED], Formerly Known as [REDACTED]" in the "name(s)" blank and "Forms 1042 Withholding" in the "kind of tax" blank.

LEGAL DISCUSSION

Form 1042 provides for the withholding of tax for U.S. source income of foreign persons. See I.R.C. §§ 1461-1464. I.R.C. § 1461 provides that each and every person required to withhold such tax is liable for such tax. There is no provision under these withholding and return sections for a consolidated return of tax withheld under I.R.C. § 1441. Such withholding tax is within Chapter 3 of Subtitle A Income Taxes of the Internal Revenue Code and thus does not constitute an income tax subject to the consolidated return rules of I.R.C. §§ 1501 and 1502 which apply only to income tax imposed by Chapter 1. Accordingly, each member of a consolidated group is treated as a separate member for purposes of I.R.C. §§ 1441 and 1442.

Generally, the name of the taxpayer shown on the return can be used on the consent; however, when a corporation changes its name only, the consent should be prepared in both names. See IRM

121.2.22.6.2. In the present case, you correctly identified [REDACTED] as the party to sign the Forms 872 relating to the Forms 1042 of [REDACTED] for the years [REDACTED] through [REDACTED]. The Forms 872 should be signed by a corporate officer of [REDACTED] with the corporation name, followed by the signature and title of the officer authorized to sign.

If you have any questions on this matter, please call me at (303) 844-2214 ext. 224.

DAVID J. MUNGO
Associate Area Counsel (LMSB)

By: _____
PAMELA J. SEWELL
Attorney (LMSB)

cc: [REDACTED], Team Coordinator